



**AND DENIED IN PART** on the same grounds as those set forth with reference specifically to the School Board's motion, below.

(2) Defendant Sumner County Board of Education's Motion to Dismiss (Doc. No. 22) is hereby **GRANTED IN PART AND DENIED IN PART**. Specifically, the motion to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction is **DENIED**; the motion to dismiss under Rule 12(b)(6) is **GRANTED IN PART** as follows:

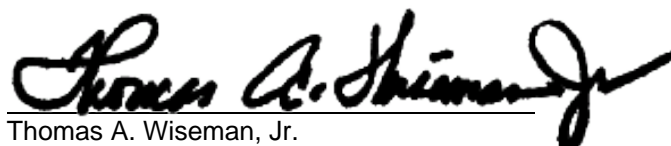
- Count III of the Complaint, seeking damages based on Defendants' alleged violation of Plaintiffs' rights to familial association, and that portion of Count I alleging a violation of Jane Doe's right to familial association, are **DISMISSED** for failure to state a claim;
- The claims in Count IV of the Complaint against the Board are **DISMISSED WITHOUT PREJUDICE** based on failure to exhaust administrative remedies under the IDEA;
- Any claim for a constitutional violation based upon alleged repeated verbal abuse by Weidenbenner or based upon Weidenbenner's allegedly forcing Jane Doe to smell her own feces is **DISMISSED** for failure to state a claim;
- Plaintiffs' claim against the School Board based directly upon Weidenbenner's behavior under a theory that Weidenbenner was an official policy maker for the Board is **DISMISSED**;
- Plaintiffs' § 1983 claim against the School Board based solely upon the School Board's purported "special relationship" with Jane Doe is **DISMISSED**.

In all other respects, the Defendants' Rule 12(b)(6) motions to dismiss are **DENIED**.

(3) Defendants' Motion to Strike paragraph 7 of the Complaint (Doc. No. 20) is **DENIED**.

This matter is referred back to the Magistrate Judge for further case management as may be necessary.

It is so **ORDERED**.

  
Thomas A. Wiseman, Jr.  
Senior U.S. District Judge